

Exhibit 19

In The Matter Of:

ORCHARD HOTEL, LLC

v.

D.A.B. GROUP, LLC, et al.

RICHARD MAHER- Vol. 1

April 3, 2013

MERRILL CORPORATION

Legalink, Inc.

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10th Floor
New York, NY 10014
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1
2 SUPREME COURT OF THE STATE OF NEW YORK
3 COUNTY OF NEW YORK

4 -----x
5 ORCHARD HOTEL, LLC,

6
7 Plaintiff,

8 -against- Index No. 850044/2011

9 D.A.B. GROUP, LLC; ORCHARD CONSTRUCTION,
10 LLC; FLINTLOCK CONSTRUCTION SERVICES LLC;
11 JJK MECHANICAL INC.; EDWARD MILLS & ASSOCIATES,
12 ARCHITECTS PC; CASINO DEVELOPMENT GROUP, INC.;
13 CITYWIDE CONSTRUCTION WORKS INC.; EMPIRE
14 TRANSIT MIX INC.; MARJAM SUPPLY CO., INC.;
15 ROTAVELE ELEVATOR INC.; SMK ASSOCIATES INC.;
16 FJF ELECTRICAL CO. INC.; CITY OF NEW YORK;
17 NEW YORK STATE DEPARTMENT OF TAXATION &
18 FINANCE; LEONARD B. JOHNSON; CITY OF NEW YORK
19 ENVIRONMENTAL CONTROL BOARD; BROOKLYN FEDERAL
20 SAVINGS BANK; STATE BANK OF TEXAS and JOHN
21 DOE #1 through JOHN DOE #100, the last 100
22 names being fictitious, their true identities
23 unknown to plaintiffs, and intended to be the
24 tenants, occupants, persons or corporations,
25 if any, having or claiming an interest in or
lien upon the premises described in the
complaint,

Defendants.

-----X
222 Old Country Road
Mineola, New York

April 3, 2013
5:15 p.m.

26 DEPOSITION of RICHARD MAHER, a nonparty
27 witness herein, taken by all parties, pursuant to
28 Subpoena, held at the above-noted time and place
29 before a Notary Public of the State of New York.

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2 A P P E A R A N C E S:

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Orchard Construction, LLC

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BY: JAMES G. MARSH, ESQ.

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1 R. Maher

2 Q Did you discuss this loan during its
3 term with Mr. Patel?

4 A I am trying to recall. This loan sat
5 dormant for so long there wasn't much interaction
6 with it.

7 I think Mark Leno and others were
8 dealing with Patel. He was getting some of our
9 correspondence, e-mails, whatever on the phone.

10 I know he was involved when we had a
11 conference call with Ben and when we had Ben to
12 the office with everybody. He was in on the
13 speakerphone.

14 Directly, you know, I mean -- I don't
15 recall. That's the way it was. I don't recall
16 exactly what was.

17 Q As you sit here today, do you recall a
18 time sometime early part of 2011 where the issue
19 of the loan coming to term had come up during any
20 meetings?

21 A That was Joanne Gallo's and Bruce
22 Gordon's deal. I was just functioning on the
23 construction advances and the progress and/or
24 lack of.

25 Q Let me ask you something.

1 R. Maher

2 don't know.

3 MR. MARSH: It was sent to Ben Zhavian.

4 Q Mr. Maher, you had an opportunity to
5 read this?

6 A Yes.

7 Q Do you recall this particular e-mail?

8 A Now that it's in front of me, yes.

9 Q Was this e-mail generated by you?

10 A Yes.

11 Q On the date that is set forth on the
12 e-mail?

13 A Yes.

14 Q Can you tell me what the issue was you
15 were addressing by this e-mail?

16 A The e-mail is self-explanatory. Ben,
17 capital B-E-N, was paid as requested. Now he is
18 telling Flintlock, his GC, not to cash the check,
19 to hold onto it.

20 Those checks that we issued were valid.
21 There was no reason for him to tell him to hold
22 onto it.

23 Q You heard about this from Flintlock, I
24 presume?

25 A Yes, as it says, Chip informed me he

1 R. Maher

2 was for?

3 A I don't recall.

4 Q Were you aware that Flintlock's
5 contract afforded them 430 days to complete the
6 construction work?

7 A I don't remember the details of the
8 project -- the contract.

9 Q Correct me if I am wrong, but earlier
10 you testified that Brooklyn Federal Savings Bank
11 approval of the construction contract was
12 required before Flintlock could come on as
13 general contractor?

14 MR. MARSH: Objection to the form of
15 the question.

16 You can answer if you understand it.

17 A I believe they were approved to do the
18 work, that we felt comfortable with their
19 capacity and experience and size of their company
20 to perform the job and get the job done, and
21 everyone being cognizant of the mid November time
22 frame deadline.

23 I don't remember them, the board or
24 counsel reviewing their contract, the actual, you
25 know, document to bless this particular document

1 R. Maher

2 Federal Savings Bank or you, around March 3rd, a
3 notice of nonpayment?

4 A I don't recall, but it's very possible.
5 We had difficulties with Ben.

6 Q What were those difficulties?

7 By difficulties, do you mean the issue
8 described in --

9 A In what aspect, having a normal
10 conversation with the guy. You couldn't have a
11 normal conversation --

12 Q I'll ask a question.

13 By having difficulties with Ben, do you
14 mean the payment issues described in the first
15 paragraph of Exhibit E, where Mr. Weiss would
16 bring to your attention Ben Zhavian had directed
17 Flintlock not to cash a check, those are the
18 types of issues you are referring to?

19 A That's an issue, yes. That's an
20 issue. This line, misuse of funds, this is a
21 misuse of funds and potential violations of the
22 law.

23 You are not helping yourself and
24 breaching the loan agreement.

25 Q Is this the first time you asked Ben

1 R. Maher

2 Jack Rosenfeld also had a lot of
3 contact with him. I was pretty much waiting for
4 the construction advances. When is it, getting
5 the extensions under the terms of the loan, et
6 cetera.

7 Because even to get his automatic
8 extensions, we had to -- we had to show he was
9 compliant with the terms and speak to the State
10 Bank of Texas.

11 A lot of times Ben was in Israel for
12 lengthy periods of time. That's where he would
13 call me from in the middle of the night and leave
14 these things on my voice mail so I couldn't
15 respond.

16 Q You had said there were -- I am
17 paraphrasing -- something along the lines all
18 sorts of problems with Ben.

19 Did you testify to something along
20 those lines?

21 A Yes.

22 Q In your experience, were they problems
23 with Mr. Zhavian's honesty?

24 A We had a situation where we did a
25 construction advance, and it was on the next

1 R. Maher

2 "So, I am going to pay him now."

3 That's what I take great exception to.

4 I can't remember all the other details. That one
5 stands out.

6 One thing I remember about that loan
7 and that was that.

8 Q Why did that stand out in your mind?

9 A That's real fucking around. Excuse my
10 French. This is monkey business. Everyone is
11 pulling out every stop under the sun to make this
12 happen and he is doing this.

13 And it wasn't like he said he didn't
14 get something complete, "I was holding back 100
15 grand."

16 And he called us and said, "I am
17 holding 100 grand on this last advance because I
18 want Flintlock to get something accomplished."

19 No. "I paid him under the table." It
20 came out at the last supper there.

21 Q You say it all came out?

22 A Ben confessed he didn't pay him. It
23 wasn't because he didn't do anything. He was
24 just being Ben.

25 Q In your experience, when a borrower